

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATERSHED MANAGEMENT

PROPOSED AMENDMENT TO THE ATLANTIC, LOWER DELAWARE, LOWER RARITAN/MIDDLESEX, MERCER, MONMOUTH, NORTHEAST, OCEAN, TRI-COUNTY, UPPER DELAWARE AND UPPER RARITAN, AREAWIDE WATER QUALITY MANAGEMENT PLANS EXCEPT FOR THE AREA WITHIN THE HIGHLANDS PRESERVATION AREA

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Atlantic, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Tri-County, Upper Delaware and Upper Raritan Water Quality Management (WQM) Plans. This amendment excludes any area within the Highlands Preservation Area as designated at N.J.S.A. 13:20-7b, which is addressed in a separate notice published in the September 19, 2005 issue of the New Jersey Register (see 37 NJR 3731(a)). Through this amendment the Department proposes to withdraw and re-designate certain wastewater service area designations in wastewater management planning areas where wastewater management plans (WMPs) are out of compliance with the WQM Planning rules (N.J.A.C. 7:15) as described in more detail below. The Department is additionally proposing to adopt a Statewide digital coverage of the resulting wastewater service areas in a separate notice published elsewhere in this issue of the New Jersey Register. Should the Department decide to adopt this proposed amendment, the resulting changes in the wastewater service areas will be reflected in the final adopted digital coverage.

A WMP is a comprehensive and detailed planning document intended to ensure that adequate wastewater treatment capacity is available to accommodate the needs of existing and future development. These plans are essential to ensuring that the planned method of wastewater treatment is appropriate given local environmental constraints and that wastewater treatment facilities can

accommodate the future needs of the wastewater management planning area. Therefore, to accomplish these objectives, a WMP must incorporate existing wastewater facilities information, existing land use, current local zoning, pending development proposals, environmental constraints, site suitability and future development plans. The wastewater management alternatives identified in a WMP will also influence the density of development, the pattern of growth and the environmental impacts associated with that development in the wastewater management planning area. As a component of an areawide WQM Plan, WMPs must also address the impact of those wastewater management decisions, and the pattern and density of development they allow, on water quality, water quantity and other environmental features.

WMPs are part of the State's continuing planning process mandated by the Water Quality Planning Act at N.J.S.A. 58:11A-7. The continuing planning process is intended to integrate and coordinate WQM Plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies (see N.J.A.C. 7:15-2.1). WMPs must be updated periodically in order to reflect and respond to changes in municipal master planning and zoning, State and regional planning activities, regulatory changes, and to ensure that the most up-to-date information is fully incorporated into the decisions made concerning wastewater management choices. An outdated WMP cannot be relied upon to accurately predict the future wastewater management needs of the WMP area. Similarly, where land use plans have changed, outdated WMPs may not accurately assess point and nonpoint source pollutant loading, hydro modification issues, water supply sustainability, and the protection of sensitive environmental resources.

The Water Quality Planning Act at N.J.S.A. 58:11A-10, requires the Department to ensure that its funding and permitting decisions do not conflict with the water quality and land use planning embodied in the areawide WQM Plans. The Department relies on the WMP components of the areawide WQM Plans to

provide a comprehensive evaluation of the cumulative effects of land use on the water resources of the State. If the WMP is not updated, the implications of new information, such as threatened and endangered species sightings, pollutant loading, or sustainability of water supply, may not be adequately reflected in the plan against which the project will be measured. For example, wastewater service areas established in an outdated WMP may not reflect more recent designations of Category One waters and the associated antidegradation policies with respect to point and nonpoint pollutant sources. Such designations may prevent the permitting of new or expanded wastewater treatment facilities that are identified in an outdated plan, leaving areas without a suitable wastewater management alternative. Further, the lack of a comprehensive and updated WMP may lead to a greater density of development than is appropriate or sustainable in terms of water resources because the cumulative impacts of development in the WMP area have not been evaluated.

If a project is not consistent with the WQM Plan, the project can only proceed if the WQM Plan is amended such that the project becomes consistent with the WQM Plan. As part of the amendment process, the Department will conduct a detailed review of the impacts of the project on water resources, in light of existing and planned development in the area. The Department will not issue a modification to the WQM Plan for the project unless it can be demonstrated that the impact of the project, when considered in combination with the existing and planned development, will continue to provide for adequate wastewater management, and the protection of water resources and other sensitive environmental resources. However, this process is neither effective nor efficient when the WMP component of the WQM Plan has not been updated. Relying on an outdated WMP or no WMP in the decision making process on an amendment can result in the failure to accurately assess the current wastewater management needs of the wastewater management planning area thereby over-committing the capacity of wastewater facilities. Such decisions may foreclose reasonable wastewater management alternatives and fail to identify significant cumulative

environmental impacts of development within the wastewater management planning area.

Wastewater management planning agency responsibility for WMP promulgation and update is established in accordance with the WQM Planning rules at N.J.A.C. 7:15-5.3 through 5.8. Each wastewater management planning agency must periodically prepare and submit WMPs. The first such submission was to be made between 1990 and 1994, in accordance with the schedule established in N.J.A.C. 7:15-5.23(b) through (e). Thereafter, an updated WMP is to be submitted at least once every six years from the date of the previous submission. (N.J.A.C 7:15-5.23(a)).

There is widespread non-compliance with the legal requirement to prepare and update WMPs in accordance with N.J.A.C. 7:15-5.23. Over the years, the Department has notified, encouraged and directed WMP agencies to satisfy their obligation to prepare and update WMPs in accordance with the rules. However, only 13 of the required WMPs are in compliance with the requirements of N.J.A.C. 7:15-5.23, 63 WMPs have never been adopted and 117 adopted WMPs are out of date. As a result, many WMPs cannot presently be relied upon to plan for the future needs of development and the protection of water resources.

Based upon the above, the Department finds it necessary and desirable to amend the areawide WQM Plans pursuant to N.J.A.C. 7:15-3.4(a) in order to ensure that proper wastewater management planning is conducted and to protect water resources while new WMPs are adopted.

Except as provided below, effective upon adoption of this proposed amendment, all sewer service area designations, including service areas designated for “Wastewater Facilities with Planning Flows of Less Than 20,000 Gallons Per Day Which Discharge to Ground Water”, in areas designated through the State Plan Policy Map in accordance with the State Planning rules, N.J.A.C. 5:85, and the

State Planning Act, N.J.S.A. 52:18A-196 et seq., as State Planning Area 3 (Fringe), Planning Area 4 (Rural) and Planning Area 5 (Environmentally Sensitive), which do not have adopted WMPs that are current in accordance with the schedule established at N.J.A.C. 7:15-5.23, will be withdrawn, except where sewers are physically installed and wastewater generating structures are currently and lawfully connected to the collection and treatment system. The withdrawn sewer service area designations will be re-designated as “Service Area for Wastewater Facilities with Planning Flows of Less Than 2,000 Gallons Per Day Which Discharge to Ground Water.” Upon adoption of this proposed amendment, projects within the area in which sewer service area designations have been withdrawn and re-designated as “Service Area for Wastewater Facilities with Planning Flows of Less Than 2,000 Gallons Per Day Which Discharge to Ground Water” that are proposing to connect to an existing treatment works or that have a wastewater design capacity of 2,000 gallons per day or more and require a NJPDES discharge permit from the Department, will be inconsistent with the applicable areawide WQM plan. This amendment does not propose to affect those areas presently designated solely for wastewater service by individual subsurface sewage disposal systems. However, the Department is also proposing an additional amendment published elsewhere in this issue of the New Jersey Register that, if adopted, would affect all general service areas for “Wastewater Facilities with Planning Flows of Less Than 2,000 Gallons Per Day Which Discharge to Ground Water”.

The Department has chosen this strategy because it will advance consistency between WMPs, the New Jersey State Development and Redevelopment Plan (State Plan) and local planning. The State Plan provides a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions and identifies areas for growth, agriculture, open space, conservation and other appropriate uses. There are five main planning areas identified in the State Plan. The State Plan policies for Planning Areas 3 (Fringe), 4 (Rural) and 5 (Environmentally Sensitive) direct

growth to be accommodated in centers and seeks to protect environs primarily as open lands. In these Planning Areas, the State Plan policies also seek to confine public water and sewer services to centers. Conversely, Planning Areas 1 (Metropolitan), 2 (Suburban) and Designated Centers, as identified in the State Plan Policy Map, and designated Coastal Area Facility Review Act (CAFRA) Centers (N.J.A.C. 7:7E-5B.3(b)) are areas where growth is encouraged and where centralized wastewater management is needed to accommodate that growth. Consequently, the Department is not proposing to withdraw the sewer service area designations in these areas, but will continue to use its authority at N.J.A.C. 7:15-5.1 to require updated WMPs when large scale WQM Plan amendments are proposed in those areas.

Until new WMPs are adopted in accordance with N.J.A.C. 7:15-5.23, the Department will only entertain site-specific amendments, or revisions where applicable, to extend public sewers into the withdrawn area in limited circumstances. For example, the Department will consider extending public sewer for public purpose projects, such as public schools, hospitals, police or fire infrastructure; affordable housing developments that contain at least 20 percent affordable housing units and are included in either the second or third round cumulative plan certified by the Council on Affordable Housing prior to December 20, 2004 or are included in a Court Judgment of Compliance to address a second round affordable housing obligation; or projects needed to protect public health and safety, such as in areas of documented failing septic systems. All other amendments proposing to reinstate sewer service area or general service areas for discharge to groundwater greater than 2,000 GPD may be approved only as part of a comprehensive updated WMP, proposed and adopted in accordance with N.J.A.C. 7:15 and Executive Order 109 (2000).

The following are exceptions to the proposal to withdraw current sewer and general service area designations as described above and the sewer service

designation will be that which was designated prior to the adoption of this amendment:

1) Infill development, which is development on an individual lot or lots that are situated between two improved lots, where the total amount of wastewater to be generated by all potential new development allowed by existing zoning between the two previously improved lots is less than 2,000 gallons per day, and where sanitary sewer infrastructure lawfully exists in the right-of-way adjoining the lot or lots such that a connection can be made without crossing any property lines other than that of the lot to be served. Both the lots and the sewer lines must exist on the date of the adoption of this amendment. Infill with wastewater volume in excess of this cumulative total has the potential to have significant environmental impacts including, but not limited to: non-point source pollution, modification of hydrology in receiving waters, depletive and consumptive water uses, and modification or destruction of environmentally sensitive areas;

2) Projects that have valid Treatment Works Approval (TWA) permits from the Department, as of the date of adoption of this amendment, provided connection occurs prior to expiration of the TWA permit;

3) Projects that have received site-specific WQM Plan amendments or revisions adopted after January 11, 2000, the effective date of Executive Order No. 109(2000), for a period of 6 years from the date of adoption of this amendment. After that, the exemption will expire, if construction beyond site clearing and grading has not commenced; and

4) Projects that have received, prior to the adoption of this amendment, both a local site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. or a municipal construction permit; and a Land Use Regulation Program

permit or NJPDES permit for a discharge to ground water from the Department, if one is required, until such time as one of those qualifying approvals expires.

- 5) Affordable housing developments that:
 - a) contain at least 20 percent affordable housing units and were included in a cumulative second round (1987-1999) plan certified by the Council on Affordable Housing (COAH);
 - b) contain at least 20 percent affordable housing units and are included in a third round cumulative plan certified by the COAH to address a second round (1987-1999) COAH obligation and which were included in a cumulative second round plan submitted to COAH prior to December 20, 2004 (this covers those towns that didn't get second round certification but have outstanding sites from prior plans that will be included in a third round plan); or
 - c) were included in a Court Judgment of Compliance to address a cumulative second round affordable housing obligation.

With regard to WQM Plan amendment applications currently pending at the Department, the following will be allowed to proceed, in accordance with N.J.A.C. 7:15 and Executive Order 109 (2000):

- 1) Site specific WQM Plan amendment applications that are filed with the Department as of the date of this proposal, provided that those applications are not disapproved or returned under N.J.A.C. 7:15-3.4(g);
- 2) WQM plan revision applications that are pending before the Department as of the date of this proposal that have fully addressed the application requirements which include a demonstration that no significant individual or cumulative impacts will occur to environmentally sensitive areas or other natural resources due to the proposed revision.

The following agencies have WMPs that are in compliance with the schedule at N.J.A.C. 7:15-5.23 and thus the sewer service and general service area designations in those WMPs are unaffected by this amendment:

North Hanover Township	Lower Raritan/Middlesex
Beverly Sewer Authority	Mt. Arlington Borough
Cape May County	Carney's Point
Livingston Township	Salem, Alloway, Quinton
East Greenwich	Montgomery Township
Greenwich Township	Sussex County
Harrison Township	

A list of the affected WMP agencies is available on the Department's webpage at <http://www.nj.gov/dep/watershedmgt/wqmps.htm>.

The Department is also proposing to adopt a Statewide digital coverage of the adopted wastewater service areas into each of the areawide WQM Plans through a separate amendment proposal published elsewhere in this issue of the New Jersey Register. Should the Department decide to adopt this proposed amendment, the resulting changes in the wastewater service areas will be reflected in the final adopted digital coverage.

Persons interested in reviewing what effect the withdrawn sewer service area designations and the re-designation for "Service Area for Wastewater Facilities with Planning Flows of Less Than 2,000 Gallons Per Day Which Discharge to Ground Water" as described above may have on WQM plans in their area can view the proposed maps at www.nj.gov/dep/gis/newdata.htm. Information on the State Planning Area boundaries and Designated Centers is available at www.nj.gov/dca/osg/resources/maps/index.shtml. Information on the CAFRA Centers boundaries is available at www.nj.gov/dep/gis/cafralayers.htm.

Public hearings on the proposed WQM Plan amendment will be held as follows:

Date: November 17, 2005
Time: 1:00 pm to 5:00 pm
Location: Lewis Morris County Park and Cultural Center
300 Mendham Road (County Road 510)
Morris Township, New Jersey.

Date: November 21, 2005
Time: 1:00 pm to 5:00 pm
Location: Rutgers EcoComplex Environmental Research and
Extension Center
1200 Florence-Columbus Road
Mansfield Township, New Jersey.

Date: November 30, 2005
Time: 1:00 pm to 5:00 pm
Location: Galloway Township Library
306 East Jimmie Leeds Road
Galloway, New Jersey.

Interested persons may submit written comments on the amendment to WQM Program Docket, Department of Environmental Protection, Division of Watershed Management, P.O. Box 418, 401 East State Street, Trenton, New Jersey 08625. All comments must be submitted within 15 days following the last public hearing. All comments submitted prior to the close of the comment period shall be considered by the Department in reviewing the amendment request.

Any interested person may request in writing that the Department extend the public comment period in this notice up to 30 additional days. These requests must state the reasons why the proposed extension is necessary. These

requests must be submitted within 30 days of the date of this public notice to WQM Program Docket at the Department address cited above.

Lawrence J. Baier, Director
Division of Watershed Management
Department of Environmental Protection

Date